

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 02-0339
Sales and Use Tax
For the Years 1998-1999

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ISSUE

I. Sales and Use Tax- Accommodation Sales

Authority: IC 6-8.1-5-1 (b), IC 6-2.5-2-1, IC 6-2.5-4-4(a), *Park 100 Development v. Indiana Department of State Revenue*, 429 N.E.2d 220, (Ind. 1981).

STATEMENT OF FACTS

The taxpayer is an Indiana corporation which provides specialized, technical computer training services. In some instances, the taxpayer provides the facility but not the trainer. In those instances, the clients provide their own trainer. After an audit, the Indiana Department of Revenue, hereinafter referred to as the "department," assessed additional sales and use taxes. The taxpayer protested the imposition of sales tax on the fees paid for use of the facilities when the taxpayer did not provide the trainer. A hearing was held on this issue.

I. Sales and Use Tax- Accommodation Sales

Discussion

All tax assessments are presumed to be accurate and the taxpayer bears the burden of proving that any assessment is incorrect. IC 6-8.1-5-1 (b). Indiana imposes an excise tax, the sales tax, on sales of tangible personal property by retail merchants in retail transactions. Purchasers are liable for the sales tax that the retail merchants collect and remit to the state. IC 6-2.5-2-1. There is no sales tax imposed on services unless the law specifically defines the provision of a particular service as a retail transaction subject to the sales tax. It is well established that laws imposing a tax are strictly construed against the department unless an exemption statute is being interpreted. *Park 100 Development v. Indiana Department of State Revenue*, 429 N.E.2d 220, (Ind. 1981).

In the taxpayer's situation, the department found that the taxpayer's provision of training services in its facilities were the provision of services not subject to the sales tax. The department imposed the sales tax on the taxpayer's sales to clients who provided their own instructors. The department based its assessment on the definition of leasing accommodations as a retail transaction subject to sales tax at IC 6-2.5-4-4(a) as follows:

A person is a retail merchant making a retail transaction when the person rents or furnishes rooms, lodgings, or other accommodations, such as booths, display spaces, banquet facilities, and cubicles or spaces used for adult relaxation, massage, modeling, dancing, or other entertainment to another person: (1) if those rooms, lodgings, or accommodations are rented or furnished for periods of less than thirty (30) days; and (2) if the rooms, lodgings, and accommodations are located in a hotel, motel, inn, tourist camp, tourist cabin, gymnasium, hall, coliseum, or other place, where rooms, lodgings, or accommodations are regularly furnished for consideration.

The taxpayer contends that even when it does not provide the instructor, it is actually providing a service and selling its technical computer knowledge rather than leasing an accommodation subject to sales tax. The taxpayer bases this contention on the comparison of its agreement with its clients to leases at typical conference centers in the same geographic area. The taxpayer's rates for a day are significantly above those documented in the file at other area conference centers. The taxpayer contends that these higher rates reflect that the contract is actually for the provision of services and sale of its computer knowledge at the taxpayer's location rather than the lease of a meeting facility.

The taxpayer's argument is unpersuasive. Although their higher rates reflect the greater services involved in the set up of the equipment provided with the rental accommodation, this is a quantitative difference. It does not change the basic character of the contract from the rental of a room with equipment ready to operate.

Finding

The taxpayer's protest is denied